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To: EXAMINER RODNEY P. SWARTZ
Firm: PTO
Fax No. 703-308-4242
From: THOMAS J. KOWALSKI, ESQ.
Date: October 1, 2003
Re: USSN 09/973,406
OUR REF: 674502-2000.2
No. of Pages: 4
(including cover page)

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#13

JM

10/2/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : SADZIENE et al.
 Serial No. : 09/973,406 Filing Date : October 9, 2001
 Title : METHODS AND COMPOSITIONS INCLUDING A 13 kD
 B BURGDORFERI PROTEIN
 Art Unit : 1645 Examiner : Rodney P. Swartz

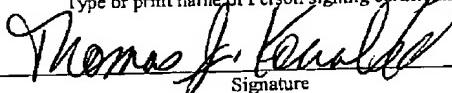
745 Fifth Avenue, New York, NY 10151
EXPEDITED PROCEDURE
RESPONSE AFTER FINAL ACTION
UNDER 37 C.F.R. 1.116

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I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Thomas J. Kowalski, Reg. No. 32,147

Type or print name of Person signing certification



Signature

October 1, 2003

Date of Signature

TERMINAL DISCLAIMER IN RESPONSE TO FINAL OFFICE ACTION

Mail Stop AF
 Commissioner for Patents
 P.O. Box 1450, Alexandria, VA 22313-1450

Dear Sir:

This is in response to the September 23, 2003 Final Office Action, that indicated that the Terminal Disclaimer filed July 25, 2003 was not entered, and hence maintained a double patenting rejection.¹ Reconsideration and withdrawal of the double patenting rejection are

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¹ It is noted that this paper is BOTH a response to the Final Office Action, and a Terminal Disclaimer, because 37 CFR 1.4(c) cited in the Final Office Action uses the permissive term "should", such that there is NO prohibition in the Rules against having more than one issue addressed in a paper; and thus, it is respectfully submitted that, 37 CFR 1.4(c) cannot serve, and should not have served, as a basis for any refusal to enter the July 25, 2003 Terminal Disclaimer, or this paper, i.e., the July 25, 2003 Terminal Disclaimer should have been entered, and so too should this paper. Accordingly, it is respectfully submitted that the Final Office Action should NEVER have been issued; allowance should have resulted from the July 25, 2003 filing. And, the Examiner, as well as his SPE, Lynette Smith, and the Group Director, John Doll, are respectfully invited to promptly contact the undersigned telephonically if there is any reason this document is not entered and a Notice of Allowance not promptly issued, especially as it is believed that supervisory review as to Final Office Action, and its issuance, e.g., instead of placing a courtesy telephone call to the undersigned if there was a desire for a Terminal Disclaimer in a separate paper, are worthy of supervisory review, and such review is likewise respectfully requested, especially, in the event this paper is not promptly entered and a Notice of Allowance is not promptly issued. Accordingly, reconsideration and withdrawal of the rejection of the Final Office Action and prompt issuance of a Notice of Allowance are also respectfully requested.

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respectfully requested in view of this Terminal Disclaimer, the recordal of which is also respectfully requested, with any fee therefore or any overpayment in such fees, to be charged or credited to Deposit Account No. 50-0320. For the purposes of expediting prosecution, without any admission, without any prejudice, without surrender of subject matter, without any intention of creating any estoppel as to equivalents, a Terminal Disclaimer as to the '101 patent is herewith provided as follows:

I, Thomas J. Kowalski, declare that I am the attorney of record and that I am authorized to execute terminal disclaimers on behalf of Board of Regents, The University of Texas System ("the Board of Regents"), the assignee of the above-captioned application ("the present application") and U.S. Patent No. 6,300,101 ("the '101 patent");

That the Board of Regents has a place of business at 201 West 7th Street, Suite 820, Austin, Texas, 78701-2981;

That the Board of Regents is the assignee of the entire right, title and interest in, to and under U.S. Patent application Serial No. 09/973,406, filed October 9, 2001 (the present application) as a divisional of U.S. Application Serial No. 08/264,036, filed June 22, 1994, now U.S. Patent No. 6,300,101 ("the '101 patent"), by virtue of the assignment from the inventors as set out at Reel 7103 and Frame 0318, where said assignment was recorded at the U.S. Patent and Trademark Office on August 19, 1994;

That the Board of Regents is the assignee of the entire right, title and interest in, to and under U.S. Application Serial No. 08/264,036, filed June 22, 1994, now U.S. Patent No. 6,300,101 ("the '101 patent"), by virtue of the assignment from the inventors as set out at Reel 7103 and Frame 0318, where said assignment was recorded at the U.S. Patent and Trademark Office on August 19, 1994;

That the Board of Regents hereby disclaims the terminal part of any patent granted on the present application which would extend beyond the expiration date of the full statutory term of the '101 patent;

That the Board of Regents hereby agrees that any patent so granted on the present application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to the '101 patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors or assigns;

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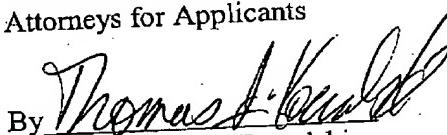
That no terminal part of any patent granted on the present application is disclaimed prior to the full statutory term of the '101 patent, in the event that said '101 patent earlier expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. §1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term, except for the separation of legal title stated above;

In accordance with 37 C.F.R. § 3.73(b), the undersigned attorney of record, empowered to sign this Statement on behalf of the assignee, states that the Board of Regents, is the assignee of the entire right, title and interest in the patent and patent application identified above (the present application and the '101 patent) by virtue of the assignment identified above.

And thus, that the undersigned has reviewed documents in the chain of title of the patent and patent application identified above and, to the best of the undersigned's knowledge and belief, title is in the assignee identified above.

Reconsideration and withdrawal of the double patenting rejection, consideration and entry of this paper and recordal of this Terminal Disclaimer, and reconsideration and withdrawal of the rejection of the Final Office Action, and prompt issuance of a Notice of Allowance, are all respectfully requested; with any fee therefor or any overpayment in such fees, to be charged or credited to Deposit Account No. 50-0320.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By 

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